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FIRST GENERAL COUNSEL'S REPORT

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MUR 6638
DATE COMPLAINT FILED: September 4, 2012
DATE OF LAST RESPONSE: February 20, 2013
DATE ACTIVATED: December 5, 2012

EXPIRATION OF SOL: December 4, 2014
to July 18, 2017

COMPLAINANT: Scott Randolph, Chairman
Orange County [Florida] Democratic Executive Committee

RESPONDENTS: William Todd Long
Todd Long for Congress (2010) and
Rosa Alvarez in her official capacity as treasurer
Long, William Todd (f/k/a Todd Long for U.S. Congress) (2012)
and Todd Long in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 439a
2 U.S.C. § 434(b)
11 C.F.R. § 113.1(g)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

William Todd Long was an unsuccessful candidate for the U.S. House of Representatives during the 2008, 2010, and 2012 election cycles. The Complaint in this matter alleges that, in 2009, Long entered into a "personal obligation to purchase a significant number of copies" of a book that he "co-published" with a publishing firm called Creation House. Compl. at 1 (Aug. 31, 2012). It further alleges that Long used \$44,499.99 in campaign funds to purchase

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¹ Anthony Calabro was treasurer of Todd Long for U.S. Congress (2012) until November 27, 2012, when an amended Statement of Organization was filed changing the name to "Long, William Todd" and naming Todd Long as the new treasurer (collectively, the "2012 Committee").

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1 copies of the book in 2009 and 2010 in fulfillment of that personal obligation, and an additional
2 \$6,510 in campaign funds to mail out copies of the book in 2012. *Id.* at 1-2. The Complaint
3 alleges that Long and his campaign committees violated the Federal Election Campaign Act of
4 1971, as amended (the "Act"), and the Commission's "personal use" regulation by using
5 campaign funds to fulfill a personal obligation of the candidate. *Id.* at 3. The Complaint further
6 alleges that Respondents "knowingly and corruptly attempt[ed] to cover up this substantial theft
7 of campaign funds by filing false reports with the . . . Commission." *Id.*

8 Based on the available information, it appears that Long may have received a personal
9 financial benefit in connection with the purchase and distribution of books by his campaign
10 committees. We therefore recommend that the Commission find reason to believe that Long and
11 the 2012 Committee violated the Act and authorize an investigation. We further recommend that
12 the Commission dismiss the reporting allegation.

13 II. FACTS

14 Long ran for Congress in Florida's 8th Congressional District in 2008 and 2010, and in
15 the 9th Congressional District in 2012. Todd Long for Congress was Long's principal campaign
16 committee for the 2010 election and Rosa Alvarez served as its treasurer (collectively, the "2010
17 Committee"). The 2010 Committee filed a Statement of Organization with the Commission on
18 October 30, 2009, and was terminated on September 2, 2010. Long's principal campaign
19 committee for the 2012 election filed a Statement of Organization on March 26, 2012. The 2010
20 and 2012 Committees submitted separate responses to the Complaint, as did Long.

21 According to its website, Creation House engages in "co-publishing," which it describes
22 as "a hybrid between self-publishing and conventional royalty publishing" conducted in

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1 partnership with the author.² The Complaint describes Creation House as a division of Strang
2 Communications, the recipient of the payments at issue as disclosed by the 2010 Committee.
3 Compl. at 1. According to Florida corporate record filings, "Creation House" and "Strang
4 Communications" are "fictitious names" owned by the same entity, Plus Communications, Inc., a
5 registered Florida for-profit corporation.³

6 Creation House's "co-publishing" relationship with an author anticipates that, unlike the
7 financial relationship between a traditional publisher and an author that may involve an advance
8 paid by the publisher to the author, the entire cost of production and printing for the "first press
9 run" will be paid by the author to Creation House before the book is sent to the printer.⁴
10 Although the minimum number of books Creation House requires the author to purchase is
11 unclear (its website uses the term "significant quantity"), its "Proposal Application Form" lists
12 choices ranging from 2,000 to 10,000 to "other."⁵ In return for the author's payment, Creation
13 House agrees to purchase an unspecified number of copies to sell "through the trade" and to pay
14 the author an unspecified royalty for each sold book.⁶ Creation House's marketing efforts
15 include making the book available to "industry trade buyers, including major book distributors,

² See <http://www.creationhouse.com/about-creation-house> (last visited Sept. 17, 2013).

³ See www.sunbiz.org (last visited Sept. 17, 2013). Creation House states on its website that it is "a division of Charisma Media, . . . specializ[ing] in a variety of genres and provid[ing] professional production, editing, and marketing for our authors." See <http://www.creationhouse.com/about-creation-house>. Charisma Media is also a fictitious name owned by Plus Communications, Inc. *Id.*

⁴ See <http://creationhouse.com/about-creation-house>; <http://creationhouse.com/index.php/about-creation-house/how-to-co-publish/step-4> ("Payments for the production and printing of the book are divided into a two-payment system, with half of the full payment due when the contract is signed and the final half due before the book is sent to the printer.") (last visited Sept. 17, 2013).

⁵ See <http://creationhouse.com/index.php/proposal-application-form> (last visited Sept. 17, 2013).

⁶ See <http://creationhouse.com/about-creation-house> (last visited Sept. 17, 2013).

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1 bookstores, and Web sites,” advertising the book through its internationally distributed trade
2 catalog, and sending out press releases “to various media outlets.”⁷

3 The Complaint states that Long was the host of a radio talk show called *The Conservative*
4 *Comeback* that aired in Central Florida on 540 WFLA AM. Compl. at 1. Complainant alleges
5 that, in 2009, Long entered into a co-publishing agreement with Creation House to publish a
6 book entitled *The Conservative Comeback: How To Win The Battle For The Soul Of America*.
7 *Id.* The Complaint includes a copy of the Creation House 2010 Catalog, which identifies Long
8 as the author of a book by that same name, at a retail price of \$12.99. *Id.*, Ex. 1 at 6. The
9 Complaint states that Long was attempting to “bolster his career as a radio talk show host by
10 entering into a contract with a vanity publisher to co-publish a book with the same name as his
11 radio show.” *Id.* at 3.

12 The Complaint quotes the terms found on Creation House's website and alleges that,
13 under the terms of Long's agreement with Creation House, Long had a “personal obligation to
14 purchase a significant number of copies” of the book, and that Creation House would agree to
15 “pay [the author] a royalty for each book [it] sell[s].” *Id.* at 1. The Complaint contends that
16 Respondents violated the “personal use” prohibitions of the Act and Commission regulations
17 when the campaign assumed Long's personal obligation by disbursing \$44,499.99 to purchase
18 copies of his book during the 2010 election cycle, and by using \$6,510 in campaign funds in
19 2012 to mail copies of the book. *Id.* at 2-3.

20 In addition to Long's “personal obligation” to purchase books based on the alleged
21 agreement, the Complaint identifies other factors that it contends indicate that Long's debt was
22 personal and incurred irrespective of his 2010 and 2012 campaigns. For instance, an affidavit

⁷ See <http://creationhouse.com/about-creation-house/services> (last visited Sept. 17, 2013).

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1 that Long executed on April 6, 2011 as part of his divorce proceeding lists a \$2,720 debt to
2 "Strang Communications" among Long's personal liabilities. *Id.*, Ex. 2 at 9. Further, the
3 Complaint asserts that the 2010 Committee's failure to initially disclose the book payment
4 reflects that Long "tried to hide" the payment, and attempted to "cover up" the "theft" by filing
5 "false" disclosure reports. *Id.* at 2-3. Specifically, the Complaint states that the 2010 April
6 Quarterly Report disclosed two \$10,833.33 payments to Strang Communications, listing the
7 purpose as "'check.'" *Id.* at 2. After the Reports Analysis Division ("RAD") sought clarification
8 through a Request for Additional Information ("RAI"), the 2010 Committee amended its April
9 Quarterly, describing the purpose of one disbursement as "books/printing" and the other as
10 "books." *Id.*, Ex. 9 at 2.

11 In addition to the disbursements to Strang Communications, the 2010 Committee
12 reported \$1,533 in other book-related disbursements, including gas for book delivery and for
13 postage. The Complaint states that Long "continue[d] to use campaign funds to distribute
14 copies" of the book in 2012 based on disbursements totaling \$6,510 for postage and mailing.
15 The chart below lists book-related disbursements disclosed by Long's campaign committees
16 from 2009 through 2012 (amounts with asterisk not identified in Complaint):

17

Book-related Disbursements Disclosed by 2010 and 2012 Committees

Date	Amount	Payee	Purpose
12/04/09	\$10,833.33	Strang Communications	Books
2/04/10	\$10,833.33	Strang Communications	books/printing
2/22/10	\$10,833.33	Strang Communications	Books
5/28/10	\$128.00*	Andrew Monk	Gas for book delivery
6/01/10	\$4,000.00	Strang Communications	Printing
7/19/10	\$4,000.00	Strang Communications	Printing
8/04/10	\$4,000.00	Strang Communications	Printing
8/19/10	\$731.00*	US Post Office	postage for books
8/19/10	\$674.00*	US Postal Service	mail books
7/13/12	\$1,240.00	Postmaster	stamps for books
7/17/12	\$2,470.00	Postmaster	stamps for books
7/18/12	\$2,800.00	Iamsco Mail	mailing books
Total	\$52,542.99		

Long appears to have promoted his book in 2009 on his website and radio show, both of which used the name *The Conservative Comeback*.⁸ A video of Long promoting his book can be found on YouTube as well as what appears to be a personal website (toddlong.webs.com), and the book is still available for sale to the public through the publisher's website and on various retail websites.⁹

In his response, Long acknowledges that he entered into a book agreement with Creation House in 2009. Long Resp. at 1 (Sept. 26, 2012). He does not dispute the Complaint's

⁸ See <http://web.archive.org/web/20090310165928/http://theconservativecomeback.com/>; <http://web.archive.org/web/20090418033908/http://theconservativecomeback.com/> (includes the text "The following is an excerpt from Todd's upcoming book 'The Conservative Comeback' . . .") (screen shots captured March 10 and April 18, 2009); <http://www.youtube.com/watch?v=tXfuNu5Q0Xc> (video starts with Long stating "I'm here today at the 540 WFLA studios . . . What I want to talk to you about today . . . is our book . . ." and ends with screenshot of text "purchase the book at TheConservativeComeback.com") (text below video states that it was uploaded on Sept. 4, 2009).

⁹ See TODD LONG, *THE CONSERVATIVE COMEBACK*, <http://toddlong.webs.com/> (last visited Sept. 17, 2013); <http://www.youtube.com/watch?v=tXfuNu5Q0Xc> (last visited Sept. 17, 2013); <http://creationhouse.com/contact-us> (containing a link to <http://strang.christianbook.com>); http://www.amazon.com/Conservative-Comeback-Battle-Soul-America/dp/1616381450/ref=sr_1_2?s=books&ie=UTF8&qid=1376578544&sr=1-2&keywords=conservative+comeback (last visited Sept. 17, 2013); <http://www.barnesandnoble.com/w/the-conservative-comeback-todd-long/1112680159?ean=9781616381455> (last visited Sept. 17, 2013).

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1 description of the terms of the co-publishing agreement as outlined on the Creation House
2 website; rather, he asserts that he purchased copies of his book with his own money. *Id.* Long
3 further notes that “[w]hen [he] decided to run for Congress during the 2010 election, the
4 campaign purchased many more books . . . which were distributed to over 20,000 voters in the
5 district, some mailed and some hand delivered.” *Id.* Long does not deny that the agreement with
6 Creation House provided for the payment of royalties based on the number of books sold, nor
7 does he state that he received no royalties; instead, Long asserts that “at no time did [he] *profit*
8 from any of these books we purchased for the campaign.” *Id.* (emphasis added).

9 Long states that, in the 2012 election, “the campaign once again distributed books” that
10 he “*had purchased personally* in the primary for which costs were incurred.”¹⁰ *Id.* (emphasis
11 added). Long concedes that he “did owe Strang Communications a very small amount of money
12 for books [he] had personally purchased from them, (which [the complaint] referred to . . . [in
13 the] financial affidavit in the divorce proceeding),” but claims that he “believe[s] it was just
14 delivery costs,” which he has “since repaid . . . with [his] own funds.” *Id.* Finally, Long states
15 that he has “personally contributed hundreds of thousands to [his] campaigns and clearly [is] not
16 misusing funds of [his] supporters.”¹¹ *Id.*

17 The 2012 Committee asserts in a separate response that “Long bought some books . . .
18 from his own personal funds which he paid back with his personal funds.” 2012 Comm. Resp.
19 at 1 (Oct. 24, 2012). The 2012 Committee states that “[s]ome books were bought and distributed
20 by the campaign, since it was a book of solutions to our national challenges and we believed

¹⁰ The primary election occurred on August 14, 2012. As indicated in the above chart, the 2012 Committee disclosed three book-related disbursements in July 2012.

¹¹ Of the \$258,695 in total funds received by the 2010 Committee (the committee that made most of the book disbursements), Long contributed or loaned a total of \$97,500.

1 much more effective than palm cards.”¹² *Id.* The 2012 Committee denies that the campaign ever
2 paid “any personal debt or obligations” of Long. *Id.*

3 The Response of the 2010 Committee mainly addresses the amended 2010 April
4 Quarterly Report in response to the RFAI from RAD. It states that “that report was done with
5 care and per the rules as [the treasurer] knew them to be,” and that “[the treasurer] spen[t] an
6 exorbitant amount of time to correct the mistake.” 2010 Comm. Resp. at 1 (Feb. 14, 2013). The
7 2010 Committee does not address the “personal use” allegations but denies knowledge of any
8 issues or statements related to Long’s divorce.

9 III. LEGAL ANALYSIS

10 Under the Act, a candidate and his or her authorized committee have wide discretion in
11 making expenditures to influence the candidate’s election. 2 U.S.C. § 439a(a). The Act
12 provides, however, that contributions to a candidate “shall not be converted by any person to any
13 personal use.” 2 U.S.C. § 439a(b)(1). The Act specifies that conversion to personal use occurs
14 when a contribution is used to fulfill any commitment, obligation, or expense of a person that
15 would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of
16 federal office. 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g).

17 The Act and Commission regulations provide a non-exhaustive list of uses of campaign
18 funds that are *per se* personal use. 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of
19 campaign funds not on this list, the Commission determines, on a case-by-case basis, whether
20 other uses of funds in a campaign account fulfill a commitment, obligation, or expense that

¹² This statement suggests that the 2012 Committee purchased books instead of only distributing those purchased by Long, which appears to conflict with Long’s statement. The 2012 Committee does not appear to have disclosed any such book purchases; further, it disclosed no in-kind contributions from Long related to his asserted purchases — which he presumably donated to his campaign. *See* 11 C.F.R. § 104.13; Advisory Op. 1995-24 (Palmer) (selling of candidate’s book to his campaign at a price equal to printing costs will result in in-kind contribution in the amount of the difference between that price and the current market value).

1 would exist irrespective of the candidate's campaign or duties as a federal officeholder and
2 therefore are personal use. *Id.* § 113.1(g)(1)(ii).

3 In several advisory opinions, the Commission has considered whether the purchase by an
4 authorized committee of its candidate's book is personal use. In Advisory Op. 2001-08
5 (Specter), the Commission determined that the use of campaign funds to purchase the
6 candidate's autobiography would "defray an expense that would not exist irrespective" of the
7 campaign and would not be an impermissible personal use. The Commission based its
8 conclusion on what it described as several key facts, as follows:

9 The books purchased by the Committee will be used solely for distribution to
10 contributors to the Committee and thus will be used by the Committee only for
11 the purpose of influencing your election to the Senate. In addition, the quantity
12 purchased by the Committee will not exceed the number needed for the described
13 distribution. You also indicate that you will receive no royalties or income, and
14 will declare no tax deductions, as a result of the sale of these books to the
15 Committee. Moreover, such sales will not increase your opportunity to receive
16 future royalties.

17
18 *Id.* at 3 (footnotes omitted). The Commission further stated that "your non-receipt of
19 such royalties and other benefits indicates that the sale to the Committee is not, in reality,
20 a device to use the Committee to benefit you financially."¹³ *Id.*

21 In Advisory Op. 2004-18 (Lieberman), the Commission approved an arrangement
22 whereby the authorized committee had proposed to purchase a book authored by the candidate
23 several years earlier, and for which he had been receiving royalties pursuant to the publishing
24 agreement. The facts were similar to AO 2001-08 (Specter) except that, instead of having the
25 publisher donate the royalties attributable to the committee's purchase to charity, the candidate

¹³ More recently, in Advisory Op. 2011-02 (Brown), the Commission, noting that each of the above facts were present in the request, concluded that the use of campaign funds to purchase the candidate's book would defray an expense that would not exist irrespective of the campaign and would not be an impermissible personal use of campaign funds if all royalties for the committee's purchase were paid by the publisher to charity with no personal benefit to the candidate. *Id.* at 6.

1 proposed to contract with the publisher to waive any potential royalties or royalty credits. The
2 Commission stated that the "waiver of royalties and royalty credits that would otherwise result
3 from the sale of copies of [the candidate's] book to the Committee precludes the use of the sale
4 as a device to use the Committee to benefit him financially." AO 2004-18 at 4.¹⁴

5 Unlike the facts presented in the above advisory opinions, the facts in this matter raise the
6 possibility that the use of campaign funds to purchase and distribute Long's book may have
7 benefited him financially, fulfilling a "commitment, obligation, or expense" that would exist
8 irrespective of his candidacy. 2 U.S.C. § 439a(b)(2).

9 **A. Personal Use Allegation**

10 First, there is reason to believe that Long used campaign funds to pay for some portion of
11 the books he was required to purchase under a contract with Creation House, which presumably
12 would have triggered an obligation by Creation House to market the book and pay royalties to
13 Long for any additional sales to the public. Although we do not know the specific terms of
14 Long's book contract, he acknowledges entering into a book agreement with Creation House in
15 2009, purchasing copies of his book with his own money, and purchasing more copies "[w]hen
16 [he] decided to run for Congress during the 2010 election." Long Resp. at 1. Assuming he
17 executed a contract with Creation House under the same general terms as described above, *see*
18 *supra* pp. 3-4, he would have been required to make full payment for a substantial number of
19 copies before Creation House printed them. He does not state, however, when he entered into
20 the book contract, how many books he agreed to purchase, at what amount, or when he paid for
21 them, leaving unanswered whether his personal funds or the 2010 Committee's funds — or some
22 combination of the two — were used to fulfill his contractual obligations.

¹⁴ See also 1995-46 (D'Amato) (Commission approved use of campaign funds to purchase books on similar facts as AO 2001-08 (Specter) except that the candidate assigned all royalty rights to an educational institution).

1 As early as March 2009 — several months before launching his 2010 campaign in the fall
2 of 2009¹⁵ — Long appears to have operated a website in connection with his radio program, both
3 named *The Conservative Comeback*, on which he promoted his “upcoming book” of the same
4 name. *See supra* note 8. However, while Long may have entered into the book contract well
5 before his campaign, other information suggests that the printing of the book may not have
6 occurred until after he became a federal candidate, raising the possibility that the 2010
7 Committee’s book-related disbursements in late 2009 and early 2010 may have been used to
8 satisfy the purchase requirements.¹⁶ If this occurred, the campaign would in effect be
9 subsidizing Creation House’s marketing of the book, sales from which would presumably have
10 triggered royalty payments to Long.

11 The Commission has consistently determined that the expenses associated with marketing
12 a book that a commercial vendor publishes and for which it pays royalties to the candidate are
13 expenses that would exist irrespective of the candidate’s election campaign or duties as a holder

¹⁵ Long’s Statement of Candidacy and the 2010 Committee’s Statement of Organization were both received by the Commission on October 22, 2009. Based on reported receipts and disbursements, it appears that Long would have exceeded the \$5,000 statutory candidate threshold on or before November 5, 2009. *See* 2 U.S.C. § 431(2).

¹⁶ Creation House’s 2010 catalog, which was attached to the Complaint, states that the book would become “[a]vailable June 1, 2010.” Compl., Ex. 1 at 4. While Creation House states that it takes 4-6 weeks for books to be printed and shipped “after the final files are sent to the printer,” <http://creationhouse.com/index.php/about-creation-house/how-to-co-publish/step-9>, we have no information about what additional time may have been needed, if any, to make the book available for sale to the public. Other information, however, suggests that the book may have been available for purchase in 2009. For example, in a YouTube video entitled *Todd Long - The Conservative Comeback - Welcome*, listing a posting date of September 4, 2009, Long promotes the book and concludes the segment with the written statement “Purchase the book at <http://www.TheConservativeComeback.com>.” <http://www.youtube.com/watch?v=tXfuNu5Q0Xc> (last visited Sept. 17, 2013). Also, an archived posting on Long’s former campaign website, toddlongforcongress.com, dated December 29, 2009, refers to “Todd’s just released book.” <http://web.archive.org/web/20100212214047/http://www.toddlongforcongress.com/category/featured>. (Based on our review of campaign pages available on archive.org, the campaign does not appear to have posted more than a *de minimis* amount of promotional material on the website. *See* AO 2011-02 (Brown) (committee may post a *de minimis* amount of material promoting candidate’s book on its website without violating the personal use restriction); AO 2006-07 (Hayworth) (*de minimis* cost of adding the proposed promotional material to the existing committee website does not constitute a prohibited personal use)).

1 of federal office.¹⁷ Because campaign funds may have been used to fulfill the terms of the book
2 contract, and since Long's unsworn response — in which he merely denies profiting from the
3 2010 Committee's purchase — does not sufficiently rebut the allegation, there is reason to
4 believe this activity may have constituted a prohibited personal use, regardless of whether the
5 books purchased by the campaign were distributed for campaign-related purposes.¹⁸

6 Second, even if no campaign funds were used to fulfill the terms of the book contract,
7 Long would have converted funds to his personal use if he received any royalty payments or rate
8 increases resulting from his campaign's purchase of those books. Crediting Long's assertion that
9 the campaign purchased and distributed over 20,000 copies, the average cost of each copy would
10 be approximately \$2.22 or less, based on the total disbursements to Strang Communications for

¹⁷ See, e.g., AO 2011-02 (Brown); AO 2006-07 (Hayworth).

¹⁸ Long states only that the 2010 Committee distributed the books it purchased "to over 20,000 voters in the district;" the 2010 Committee does not address the issue while the 2012 Committee states only that the books it distributed were "more effective than palm cards." In the recommended investigation, we would attempt to determine whether the books purchased and distributed by the campaign served an appropriate campaign-related purpose, as described in the relevant advisory opinions. See AO 2011-02 (Brown) (noting that the committee's funds "would be used to purchase the book solely for distribution to the committee's contributors and supporters, and thus would be used by the Committee only for the purpose of influencing [its candidate's] election to Federal office," and that "the quantity purchased would not exceed the number needed for this . . . purpose"); AO 2004-18 (Lieberman) (noting that the books will "be used solely for distribution to campaign supporters and contributors," and that the "quantities purchased would not exceed the number needed for those campaign purposes"); AO 2001-08 (Specter) (noting that the "books purchased by the Committee will be used only for distribution to campaign supporters"); AO 1995-46 (D'Amato) (noting that the committee plans to "use campaign funds to purchase up to several thousand copies of the book to be used solely in campaign related activities, such as distributing . . . copies to financial contributors and other 'political supporters' as 'thank you' gifts").

Also, if payments were made by the 2010 Committee under the contract at the discounted rate made available to the author, see <http://creationhouse.com/about-creation-house> (discussing author's purchase of "significant quantity of books at a deep discount from the first press run"), and that rate was not ordinarily available in the industry, the resulting benefit could constitute an in-kind corporate contribution from Creation House to the Committee. 2 U.S.C. §§ 431(8)(A)(i), 441b(a); 11 C.F.R. § 100.52(a), (d)(1); see AO 2011-02 (Brown) (bulk rate to be paid by committee "is a standard fair market price that the publisher, under normal industry practice, makes available on equal terms to other large purchasers that are not political organizations or committees;" therefore, the discounted rate would not result in in-kind corporate contribution); AO 2004-18 at 3 (Lieberman) (committee may purchase books at a discounted rate if the discount is "made available in the ordinary course of business and on the same terms and conditions" as discounts to customers that are not political committees); AO 2001-08 (Specter) (approving the bulk purchase of the candidate's books at a discounted rate because "the Committee will pay the usual and normal charge for this type of bulk purchase from publishers").

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1 "books" and "printing" (\$44,499.99 / 20,000). Given that this amount is much lower than the
2 listed retail price,¹⁹ it is possible that Long received no royalties related to these purchases,
3 particularly if Creation House sold the books to the campaign under the same terms it made
4 available to Long. *See supra* note 16.

5 However, because the responses and other available materials exclude basic key facts,
6 including the specific provisions of the contract and the terms of the campaign's book purchases,
7 we are unable to assess whether those purchases financially benefited Long, either through the
8 direct receipt of royalties or by increasing or escalating the royalty calculation that would inure
9 to Long personally based on future sales. *See* AO 2011-02 (Brown) (publisher is willing to
10 donate candidate's royalties "and not escalate the royalty calculation that would inure to [him]
11 personally"); AO 2001-08 Specter ("such sales will not increase [candidate's] opportunity to
12 receive future royalties"). Under these circumstances, there is reason to believe that the
13 campaign's book purchases and payments to distribute the books, even if separate from the
14 purchases required of Long under the terms of the contract, constituted a prohibited personal
15 use.²⁰

16 For these reasons, we recommend that the Commission find reason to believe that Long
17 and the 2012 Committee violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g) by converting

¹⁹ Although the (paperback) price is listed as \$12.99 in Creation House's 2010 catalog (Compl., Ex. 1 at 4), the current Amazon and Barnes & Noble prices are \$10.90 and \$11.34, respectively. *See supra* note 9.

²⁰ The Complaint also alleged that by purchasing the books on behalf of Long, the Committee assumed Long's personal contractual obligations to Creation House, and provided Long a benefit by relieving him of the obligation to purchase thousands of copies. The purchase also enabled the distribution of books that promoted Long's radio show, *The Conservative Comeback*, and thus arguably presented "a device to use the Committee to benefit [the candidate] financially." AO 2001-08 (Specter) at 3. Without access to the contract, however, it is difficult to assess whether Long had a binding personal obligation to purchase books. Also, if the Committee used the books for a campaign purpose, its assumption of Long's obligation likely would be permissible unless the purchase resulted in royalty payments or royalty credits to Long. *See* AO 2004-18 (Lieberman) (committee purchase of books that the candidate wrote several years prior is permissible when there is a campaign purpose and candidate waives royalties and royalty credits).

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1 campaign funds to personal use. Because the Commission granted the 2010 Committee's
2 termination request in September 2010 and its final report disclosed no assets and no cash-on-
3 hand, and because it does not appear to have engaged in any activity since that time, we
4 recommend that the Commission dismiss the allegation that the 2010 Committee violated
5 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g).²¹

6 **B. Reporting Allegation**

7 The Complaint's allegation that Respondents filed "false" reports with the Commission
8 appears to be solely related to the 2010 Committee's initial disclosure of a February 2010 book
9 purchase, identified simply as "check." Disclosure reports filed by political committees shall
10 disclose, *inter alia*, the name and address of each person to whom an aggregate expenditure of
11 \$200 is made to meet a candidate or committee operating expense, together with the date,
12 amount and purpose of such operating expenditure. 2 U.S.C. §§ 434(b)(5); 11 C.F.R.
13 § 104.3(b)(3)(i)(B). *See* Commission's Statement of Policy: "Purpose of Disbursement" Entries
14 for Filings with Commission, 72 Fed. Reg. 887 (2007).

15 As stated earlier, in response to an RFAI dated June 8, 2010, the 2010 Committee
16 amended its 2010 April Quarterly Report by describing the purpose of one of the \$10,833.33
17 disbursements at issue as "books/printing" and the other as "books." Given that the 2010
18 Committee amended its reports approximately one month after the RFAI was sent and further
19 clarified its description of the disbursements another month after its first amendment, and in light

²¹ The Commission generally has not pursued political committees that have been terminated in the normal course (i.e., non-administrative terminations).

1 of its terminated status as described above, we recommend that the Commission dismiss the
2 allegation that 2010 Committee filed erroneous reports in connection with these disbursements.²²

3 **IV. INVESTIGATION**

4 We recommend that the Commission authorize an investigation of the possible personal
5 use violations and approve compulsory process as needed. We will attempt to conduct our
6 investigation informally, but will rely on compulsory process if necessary.

10 **V. RECOMMENDATIONS**

- 11 1. Find reason to believe that William Todd Long violated 2 U.S.C. § 439a(b) and
12 11 C.F.R. § 113.1(g);
- 13
14 2. Find reason to believe that Long, William Todd (f/k/a Todd Long for U.S. Congress)
15 and Todd Long in his official capacity as treasurer violated 2 U.S.C. § 439a(b) and
16 11 C.F.R. § 113.1(g);
- 17
18 3. Dismiss the allegation that Todd Long for Congress (2010) and Rosa Alvarez in her
19 official capacity as treasurer violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g);
- 20
21 4. Dismiss the allegation that Todd Long for Congress (2010) and Rosa Alvarez in her
22 official capacity as treasurer filed erroneous reports in 2010 in connection with
23 disbursements to Strang Communications;
- 24
25 5. Authorize the use of compulsory process;

²² The 2010 Committee's original April Quarterly Report, filed with the Commission on April 22, 2010, listed "check" in the "purpose" entry for one of the disbursements and left the other entry blank. The 2010 Committee's first amended Report, filed July 14, 2010, listed both disbursements as "check/books." Its third amended Report, filed August 11, 2010, listed the disbursements as stated above ("books/printing" and "books"). The Complaint's assertion that Respondents were intentionally "hiding" the true purpose of these disbursements is undercut by the fact that the 2010 Committee had already disclosed a disbursement for "books" — in the same amount and to the same vendor — in its 2009 Year End Report, filed January 25, 2010.

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6. Approve the attached Factual and Legal Analyses; and

7. Approve the appropriate letters.

Date

10/25/13

Daniel A. Petalas

Associate General Counsel for Enforcement

Peter G. Blumberg

Assistant General Counsel

Thomas J. Andersen

Attorney

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